(13)

Office - Supreme Court, U. S.
FILED
FEB 18 1942
ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 963

SARA T. WALSH,

Petitioner,

vs.

SCHOOL DISTRICT OF PHILADELPHIA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

GEORGE C. KLAUDER,
ABRAHAM KOPPELMAN,
WESLEY H. CALDWELL,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Statement of the matter involved	2
Grounds for jurisdiction to review	3
Petitioner raised the Federal question	5
Prayer for writ	6

Table of Cases Cited.

Continental Casualty Co. v. *United States*, 62 Sup. Ct. 393	5
Irving Trust Co. v. *Day*, 62 Sup. Ct. 398	3
Malone v. *Hayden*, 329 Pa. 213, 197 A. 344	5
State of Indiana ex rel. Anderson v. *Brand*, 303 U. S. 95	5
U. S. Mortgage Co. v. *Matthews*, 293 U. S. 232	4

Statutes Cited.

Act of March 3, 1911, c. 231, Sections 236, 237, 36 Stat. 1156, as amended (28 U. S. C. A. 344)	5
Act of April 6, 1937, P. L. 213 of Pennsylvania, amending School Code of Pennsylvania of May 18, 1911, P. L. 309	2
Act of June 20, 1939, P. L. 479	2
Constitution of the United States, Article I, Section 10, Clause 1	5

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 963

SARA T. WALSH,

Petitioner,

vs.

SCHOOL DISTRICT OF PHILADELPHIA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Sara T. Walsh respectfully represents:

1. Your petitioner respectfully prays for a writ of certiorari herein to review a final decision of the Supreme Court of the State of Pennsylvania, the highest Court of said State, in the above entitled action, the opinion and decision of said Court having been rendered and filed November 24, 1941 and reported in 343 Penna. State Reports 178, (22 Atlantic Reporter, 2nd Series 909) and (R. 79). The said court affirmed a judgment of the Superior Court of Pennsylvania, which had affirmed a

judgment entered against petitioner in favor of respondent by the Municipal Court of Philadelphia County, Pennsylvania, holding valid a statute of the Commonwealth of Pennsylvania, contrary to the petitioner's contention that the said statute is repugnant to the contract clause of the Constitution of the United States.

2. A Statement of the Matter Involved Is:

Petitioner is a teacher, employed by the School District of Philadelphia, respondent, a statutory corporation administering the Public School District in Philadelphia, and has been so employed for sixteen years. On March 8, 1938, she entered into a written contract with respondent, as required by the terms of the Tenure Act of April 6, 1937, P. L. 213 of Pennsylvania, in the form prescribed by that Act, which amended the provisions of the School Code of Pennsylvania of May 18, 1911, P. L. 309 relating to contracts with teachers. The contract by the terms of the Statute, thereafter could only be terminated by respondent for cause after hearing. The yearly salary stated in the written contract was the sum of $2800., the amount petitioner had been receiving from respondent when the Tenure Act became effective and was the amount required by that Act to be stated in the statutory contract. The Legislature of Pennsylvania by the Act of June 20, 1939, P. L. 479, which amended the Budget Section of the School Code of 1911 but not the Tenure Act, permitted respondent to reduce the salaries of teachers who were earning $2500 a year or more, by an amount not to exceed five per cent of their yearly salaries. Respondent, by its resolution of December 12, 1939, reduced the salaries of all of its teachers who were receiving $2500 a year or more, including that of petitioner, by five per cent, effective as of January 1, 1940. Petitioner protested the reduction and demanded her full contractual salary, which was refused. She then brought

suit in the Municipal Court of Philadelphia County, Pennsylvania, alleging among other things that the State Statute was repugnant to the contract clause of the Federal Constitution. The Municipal Court entered judgment against her and in favor of the respondent, upon respondent's original plea, entitled an "Affidavit of Defense in lieu of Demurrer." Petitioner then appealed to the Superior Court of Pennsylvania, which affirmed the judgment, and thereafter filed a petition to the Supreme Court for leave to appeal from the judgment of the Superior Court, which was duly allowed. The appeal was duly perfected and argued, and the Supreme Court of Pennsylvania affirmed the judgment.

3. The Grounds for Jurisdiction to Review Are:

(a) The case presents a question of great importance to all of the school teachers in the Commonwealth of Pennsylvania whose rights secured under the Constitution of the United States will be entirely destroyed if the State legislation impairing their contracts under the Tenure Act, is held valid.

Although the Supreme Court of Pennsylvania held that the contract by its terms is subject to future amendment, and the Legislature had the right to reduce petitioner's salary stated therein, thus deciding the matter on a non-federal ground, the decision of the State court in that respect is not final in view of petitioner's contention that the Statute is repugnant to the contract clause of the Federal Constitution.

In *Irving Trust Co.* v. *Day,* 62 S. Ct. 398 (January 5, 1942) your Honorable Court said: "When this Court is asked to invalidate a State Statute upon the ground that it impairs the obligation of a contract, the existence of the contract and the nature and extent of its obligation become

Federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution, and for such purposes finality cannot be accorded to the views of a State Court."

Petitioner's contract contains the provision "this contract is subject to the provisions of the Act approved the eighteenth day of May one thousand nine hundred and eleven * * * *and the amendments thereto.*" Respondent contends that the contract by reason of that provision is subject to later amendment, in view of *U. S. Mortgage Co.* v. *Matthews*, 293 U. S. 232. The Statute involved in that case, however, is materially different in its provisions that it was subject to "*or* any amendments *or additions thereto*", which is much broader than the provision in petitioner's contract. A future alternative or substitution is distinctly implied by the use of the word "or", while the word "and", which only is found in petitioner's contract, connotes an addition existing at the time of the execution of the contract. The Statute in the *Matthews* case also contains the words "or additions thereto", which are not in the provisions of petitioner's contract. Moreover, it is clear from the opinion of your Honorable Court in the *Matthews* case, that future amendments were there intended because no amendments had been made to the Statute when the mortgage was executed. On the other hand, there had been many amendments made to the School Code of 1911 before petitioner's contract was signed.

A conclusive reason for the exercise of jurisdiction in this case is found in the very terms of petitioner's contract (R. 43). The Statute which framed the contract declared that none of the statutory provisions included therein could be changed but expressly gave freedom to respondent to increase the stated salary without invalidating the contract. No similar right to decrease the salary was given and it is

a reasonable and inescapable conclusion that such power was expressly withheld. In *Continental Casualty Co.* v. *U. S.*, 62 S. Ct. 393 (January 5, 1942), your Honorable Court in construing an Act of Congress said: "Generally speaking a 'legislative affirmative description' implies denial of the nondescribed powers." Since the State Legislature described the power to increase, the denial of the right to reduce the salary is clearly implied.

The reference in the State Statute respecting the increase of salary while applying to respondent as the other party to the contract and not to the State itself, leaves no room for inference that the State was free to make later modifications resulting in a reduction, because petitioner's contract is with the State itself, as the Supreme Court of Pennsylvania distinctly held in *Malone* v. *Hayden*, 329 Pa. 213 (197 A. 344). It would be a most unusual contract, hardly worth designation as such, if it was within the power of one of the parties to change it when and as it was convenient for it to do so.

(b) The decision of the Supreme Court of Pennsylvania in favor of the validity of the Statute of that State contrary to petitioner's contention that it is repugnant to Article I, Section 10, Clause 1 of the Constitution of the United States, of itself, is within the Appellate jurisdiction of your Honorable Court under the Act of March 3, 1911, c. 231, Sections 236, 237, 36 Stat. 1156; as amended. (28 U. S. C. A. 344.)

(c) Aside from the importance of the issue presented, petitioner submits that the writ should be allowed for the reason that the decision below is clearly erroneous and not in accord with the decision of your Honorable Court in *State of Indiana, ex rel. Anderson* v. *Brand*, 303 U. S. 95.

4. Petitioner Raised the Federal Question involved in the case, in the Municipal Court of Philadelphia, the Court

of first instance, in her original pleading entitled "Statement of Claim", by averring therein that the Statute violated the contract clause of the Constitution of the United States (R. 41). That court, in its opinion (R. 59) stated that it considered the question and decided the same against petitioner. In petitioner's appeal to the Superior Court under the Assignments of Error, she raised and argued the Federal question in the Statements of Question Involved. That Court discussed the question at length in its opinion (R. 12 and 33) and decided the Statute to be valid. Petitioner again raised the question in the Supreme Court in her petition for appeal (R. 3) and in her Assignments of Error filed in that Court (R. 33). That Court affirmed the judgment, in a Per Curiam order, upon the opinion of Superior Court Judge Rhodes.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of your Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that court to certify and send to your Honorable Court for review and determination, a transcript of the record and proceedings thereon, and that the decree of the Supreme Court of Pennsylvania be reversed by your Honorable Court and that your petitioner have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And petitioner will ever pray, etc.

SARA T. WALSH,
Petitioner.

GEORGE C. KLAUDER,
ABRAHAM KOPPELMAN,
W. H. CALDWELL,
Counsel for Petitioner.

(8844)